

Docket 82987LMB  
Customer No. 01333

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Dennis E. Smith, et al

IMPROVED VOIDED ARTICLES

Serial No. 10/033,457

Filed 27 December 2001

Group Art Unit: 1772

Examiner: Walter Aughenbaugh

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Commissioner for Patents  
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Sir:

**REVISED APPEAL BRIEF PURSUANT TO 37 C.F.R. 41.37**  
**and 35 U.S.C. 134**

In response to the Notification of Non-Compliant Appeal Brief (37 CFR 41.37) mailed 07/31/2007, submitted herewith is a Revised Appeal Brief correcting grounds of rejection to include claim 39.

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### **APPELLANT'S BRIEF ON APPEAL**

Appellants hereby appeal to the Board of Patent Appeals and Interferences from the Examiner's Rejection of claims 1, 2, 5, 7-19, 21, 22, 24-40, 42 and 43, which was contained in the Office Action mailed 8/08/2006.

A timely Notice of Appeal was filed 11/08/2006.

### **Real Party In Interest**

As indicated above in the caption of the Brief, the Eastman Kodak Company is the real party in interest.

### **Related Appeals And Interferences**

No appeals or interferences are known which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal. Although a Notice of Appeal was filed December 4, 2003, an intervening Request for Continued Examination was filed on February 4, 2004 and no appeal ensued at that time.

### **Status Of The Claims**

Claims 1, 2, 5, 7-19, 21, 22, 24-40, 42 and 43 have been rejected and are pending in the application.

Claims 3, 4, 6, 20, 23 and 41 have been canceled.

Claims 1, 2, 5, 7-19, 21, 22, 24-40, 42 and 43 are being appealed.

Appendix I provides a clean, double-spaced copy of the claims on appeal.

### **Status Of Amendments**

A Request for Continued Examination, with an accompanying Amendment After Final was filed on June 16, 2006, subsequent to the Rejection. An Office Action dated August 8, 2006 was then received not allowing the claims.

## **Summary of Claimed Subject Matter**

The present invention according to claim 1 relates to a shaped article (pg. 5, line 12 – pg. 6, line 20; pg. 11, line 23 – pg. 12, line 27) comprising a continuous first polymer phase (pg. 6, line 21 – pg. 7, line 24) having dispersed therein microbeads (pg. 5, lines 3-9; pg. 9, line 12 – pg. 11, line 3) of a cross-linked second polymer (pg. 7, line 25 – pg. 9, line 9), said microbeads being bordered by void space (pg. 5, lines 9-12; pg. 11, lines 4-10; pg. 12, line 28 – pg. 13, line 31), wherein the cross-linked second polymer is derived from monomers that comprise less than 10 wt% styrenic monomers (pg. 9, lines 4-11) and are selected from the group consisting of acrylic (pg. 7, line 28 – pg. 8, line 21; pg. 20, lines 5-8; Table 3, pg. 21; ) and allylic monomers (pg. 20, lines 5-8), wherein the microbeads are thermally stable (pg. 4, line 29 – pg. 5, line 2), experiencing a 2% weight loss above 270°C (pg. 19, lines 15-17; Table 3, pg. 21; Table 4, pg. 22; Table 5, pg. 23), wherein the microbeads have a change in CIELAB value b\* (pg. 18, line 32 – pg. 19, line 4) towards yellowness after one week exposure (pg. 19, lines 2-3) to UV light of 50 Klux (pg. 18, line 32), wherein the change in b\* is less than or equal to 0.2 (pg. 4, lines 27-28; Table 1, pg. 20).

The present invention according to claim 21 relates to a shaped article comprising a continuous first polymer phase (pg. 6, line 21 – pg. 7, line 24) having dispersed therein microbeads (pg. 5, lines 3-9; pg. 9, line 12 – pg. 11, line 3) of a cross-linked second polymer (pg. 7, line 25 – pg. 9, line 9), said microbeads being bordered by void space (pg. 5, lines 9-12; pg. 11, lines 4-10; pg. 12, line 28 – pg. 13, line 31), wherein the second polymer is derived from monomers that comprise not more than 10 wt% styrenic monomers (pg. 9, lines 4-11) and comprise methacrylate monomers (pg. 7, line 28 – pg. 8, line 21; Tables 1 - 4, pgs. 20 - 22), and wherein the microbeads are made from acrylic crosslinking monomers (pg. 8, line 22 – pg. 9, line 3; Tables 1 - 4, pgs. 20 - 22), such that the microbeads are thermally stable (pg. 4, line 29 – pg. 5, line 2), experiencing a 2% weight loss above 270°C (pg. 19, lines 15-17; Table 3, pg. 21; Table 4, pg. 22; Table 5, pg. 23), wherein the microbeads have a change in CIELAB value b\* (pg. 18, line 32 – pg. 19, line 4) towards yellowness after one week exposure (pg. 19,

lines 2-3) to UV light of 50 Klux (pg. 18, line 32), wherein the change in  $b^*$  is less than or equal to 0.2 (pg. 4, lines 27-28; Table 1, pg. 20).

The present invention according to claim 42 relates to a dye diffusion thermal transfer receiving sheet (pg. 14, lines 11-26; Examples, pg. 25, line 25 – pg. 26, line 13) comprising a continuous first polymer phase (pg. 6, line 21 – pg. 7, line 24) having dispersed therein microbeads (pg. 5, lines 3-9; pg. 9, line 12 – pg. 11, line 3) of a cross-linked second polymer (pg. 7, line 25 – pg. 9, line 9), said microbeads being bordered by void space (pg. 5, lines 9-12; pg. 11, lines 4-10; pg. 12, line 28 – pg. 13, line 31), wherein the monomers from which the second polymer is derived comprise not more than 10 wt% styrenic monomers (pg. 9, lines 4-11) and wherein the monomers from which the second polymer is derived are selected from the group consisting of acrylic (pg. 7, line 28 – pg. 8, line 21; pg. 20, lines 5-8; Table 3, pg. 21; ) and allylic monomers (pg. 20, lines 5-8), such that the microbeads are thermally stable (pg. 4, line 29 – pg. 5, line 2), experiencing a 2% weight loss above 270°C (pg. 19, lines 15-17; Table 3, pg. 21; Table 4, pg. 22; Table 5, pg. 23), wherein the microbeads have a change in CIELAB value  $b^*$  (pg. 18, line 32 – pg. 19, line 4) towards yellowness after one week exposure (pg. 19, lines 2-3) to UV light of 50 Klux (pg. 18, line 32), wherein the change in  $b^*$  is less than or equal to 0.2 (pg. 4, lines 27-28; Table 1, pg. 20).

### **Grounds of Rejection to be Reviewed on Appeal**

The following issues are presented for review by the Board of Patent Appeals and Interferences:

1 (a. Whether claims 1, 21, and 42 are indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, with regards to the recitation "after one week exposure to UV light of 50 Klux."

1 (b. Whether claims 1, 21, and 42 are indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, with regards to the recitation " wherein the change in  $b^*$  is less than or equal to 0.2."

2. Whether Claims 1, 2, 5, 7, 9-17, 21, 22, 24-26, 28-36 and 39 are anticipated by Maier et al., (U.S. Pat. No. 5, 275, 854).
3. Whether Claims 18, 19, 37, and 38 are unpatentable over Maier et al., (U.S. Pat. No. 5, 275, 854).
4. Whether Claims 8, and 27 are unpatentable over Maier et al. (U.S. Pat. No. 5, 275, 854) in view of Saito et al., (U.S. Pat. No. 6,043,194).
5. Whether Claim 40 is unpatentable over Maier et al. (U.S. Pat. No. 5, 275, 854) in view of Hart et al., (U.S. Pat. No. 5,059,579).
6. Whether Claims 42 and 43 are unpatentable over Maier et al. (U.S. Pat. No. 5, 275, 854) in view of Harrison et al., (U.S. Pat No. 5,100,862).

## **Arguments**

### **1 (a. Rejection of Claims 1, 21 and 42 under 35 USC § 112:**

For reasons made of record in paragraph 8 of the Office Action dated July 1, 2005, the Examiner has rejected Claims 1, 21 and 42 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, as the recitation "on exposure to UV light of 50 Klux for one week" renders claims 1, 21 and 42 indefinite because the scope of the claim cannot be ascertained since the recitation "on exposure to UV light of 50 Klux for one week" is a conditional limitation: the claim recites that the change in  $b^*$  value is less than or equal to 0.2 "on exposure to UV light of 50 Klux for one week", but does not require that the article be "expos[ed] to UV light of 50 Klux for one week". In an Office Action dated August 8, 2006, the Examiner indicates that "*The recitation "after one week... 0.2" does not require that the article has been "expos[ed] to UV light of 50 Klux" over a period of one week, so the recitation "after one week... 0.2" is also a conditional limitation.*"

MPEP 2173.01 states that a fundamental principle contained in 35 U.S.C. 112, second paragraph is that applicants are their own lexicographers. Applicant may use functional language, alternative expressions, negative limitations, or any style of expression or format of claim which makes clear the

boundaries of the subject matter for which protection is sought. As noted by the court in *In re Swinehart*, 439 F.2d 210, 160 USPQ 226 (CCPA 1971), a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought. MPEP 2173.02 states that the focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. The essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of:

- (A) The content of the particular application disclosure;
- (B) The teachings of the prior art; and
- (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

The claim language chosen by the Applicants mirrors closely the language used in the present specification as originally filed. (See pg. 18, line 32 – pg. 19, line 3 (“*For yellowness measurement, GRETAG SPM 100 spectrophotometer was employed to measure the  $b^*$  (yellowness) value in the CIELAB color space.  $\Delta b^*$  is the change of  $b^*$  after 1 week high intensity sunlight exposure;*”)). In addition, the terminology is commonly used in claims in the prior art. See U.S. Pat. No. 7,148,278 (claim 1. *A golf ball comprising a center and a cover, wherein the cover has a color lightness,  $L^*$ , of greater than about 86 following exposure to UV light at an irradiance power of 1.00 W/m<sup>2</sup>/nm for a period of about 1 hour to about 4 hours, and the cover comprises: a reaction product comprises a polyurea formed from a prepolymer and a curing agent; and at least one color stabilizer comprising a benzoate having the formula: wherein  $R_1$  is hydroxyalkylether, alkyl, or hydroxyphenyl;  $R_2$  is H, OH, alkyl, hydroxy(alkylether)amino;  $R_3$  is H, alkyl, or OH; and  $R_4$  is H alkyl; and wherein the cover comprises an inner cover layer and an outer cover layer disposed about the inner cover layer, the outer*

*cover layer comprising the reaction product.); U.S. Pat. No. 6,891,058 (claim 1. A liquid ultraviolet absorber compound exhibiting a Gardner color value of at most 11, wherein said ultraviolet absorber exhibits an extraction level from polyethylene terephthalate measured as the level of absorbance exhibited by a heated alcohol extract solution after 2 hours exposure of at most 0.1 absorbance units within a cell having a 10.0 cm optical path length.); U.S. Pat. No. 6,602,447 (claim 1. A clear thermoplastic article having an average thickness of at most 35 mils comprising at least one ultraviolet absorber compound exhibiting ultraviolet absorption characteristics over the range of wavelengths from about 300 to about 400 nm such that said article exhibits a UV transmission of at most 10% at the 390 nm wavelength; wherein said at least one compound exhibits an extraction level from said thermoplastic article measured as the level of absorbance exhibited by a heated alcohol extract solution after 2 hours exposure of at most 0.1 absorbance units within a cell of 10.0 cm optical length; and wherein said ultraviolet absorber comprises at least one poly(oxyalkylene) chain of at least six moles of oxyalkylene.); U.S. Pat. No. 6,438,306 (claim 1. Coated optical fiber comprising a glass optical fiber with a single protective coating or a combination of an inner and an outer primary coating applied thereon and optionally with a colored coating subsequently applied thereon wherein the inner primary coating or at least a portion of the single coating is prepared from a radiation curable composition which when cured as a capillary film with a 100 W medium pressure mercury lamp has a percentage reacted acrylate unsaturation of at least about 54% after exposure to a dose of about 4.4 mJ/cm<sup>2</sup> or wherein the outer primary coating is prepared from a radiation curable composition which when cured as a capillary film with a 100 W medium pressure mercury lamp has a percentage reacted acrylate unsaturation of at least about 56% after exposure to a dose of about 4.4 mJ/cm<sup>2</sup>.); and U.S. Pat. No. 6,407,847 (claim 1. A window comprising an electrochromic medium having a color stability  $\Delta E$  less than 5, measured in its minimum low transmission state after exposure to 700 hours in a weatherometer while cycling, each cycle consisting of application of sufficient potential for a sufficient time such that the window reaches its low transmission state for at least 210 hours.). Additional examples of similar wording may be found in U.S. Pat.*



No. 7,087,282 (claim 1); U.S. Pat. No. 7,012,033 (claim 1); U.S. Pat. No. 6,811,841 (claim 24); and U.S. Pat. No. 6,702,882 (claim 1). Given the amount of usage in existing prior art, Applicants believe that one possessing the ordinary level of skill in the pertinent art at the time the invention was made would understand that the change in b\* would require that the microbeads of the article have actually been exposed to UV light of 50 Klux for one week.

The Applicants believe and have provided evidence that one of ordinary skill in the art at the time the invention would understand the use of “after one week exposure to UV light of 50 Klux”, and, therefore, the usage of the terms is not indefinite.

**1 (b. Rejection of Claims 1, 21 and 42 under 35 USC § 112:**

For reasons made of record in paragraph 8 of the Office Action dated July 1, 2005, the Examiner has rejected Claims 1, 21 and 42 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, as the use of "CIELAB value" in the claims renders the claims indefinite since CIELAB is a tradename, and, since the computer programs associated with trademarks and tradenames may change with time, the specification must specify the nature of the b\* value. In an Office Action dated August 8, 2006, the Examiner indicates that *“Applicant's arguments presented on pages 8-11 of Amdt. F regarding the 35 U.S.C. 112, second paragraph, rejection of claims 1, 21 and 42 have been fully considered but are not persuasive. Applicant's arguments do not address the basis of the rejection: that CIELAB is a trademark. Applicant has not disputed that CIELAB is not a trademark. Applicant has not shown, for example, that the 1976 CIELAB scale, that Applicant mentions, is the same as the CIELAB scale used by Applicant, and has therefore not addressed the basis of the rejection.”*

The term b\*, as explained in a response, dated Feb 4, 04, to an Office communication, is understood by those skilled in the art of colorimetry. “b\*” is an axis of the CIELAB color scale, wherein b\* is the color axis from yellow to blue, indicating “yellowness” of a color. One of ordinary skill in the art would be aware that the term is not a trademark or tradename, but is an acronym for a

descriptive standard describing color space, which does not change over time. CIELAB is a well-known standard for indicating color in a three-dimensional chart, indicating hue and shade, and has been readily available to those of ordinary skill in the art since at least 1976. See Attachments LMBA-1, LMBA-2 and LMBA-3, provided in the Evidence Appendix. The present specification at page 4, lines 25-28, and at page 18, line 31, - page 19, line 4, states that the change in  $b^*$  is defined as the change in yellowness on the CIELAB color scale under exposure to UV light. The start point of the change in  $b^*$  would be the original color of a microbead as measured on the  $b^*$  axis before exposure to UV light. The final color is a color achieved after exposure of the microbead to UV radiation. The examples in the specification were conducted in a time period of one week, with an amount of UV light approximating sunlight of 50 Klux, as set forth at page 18, lines 31-32.

Further evidence of use of both the CIELAB standard and the term  $b^*$  is contained in patent literature, in the specification, as well as the claims, which further supports the statements that one of ordinary skill in the art would be aware that the term is not a trademark or tradename, but is a standard which does not change over time. See U.S. Pat. No. 4,363,888, col. 7, lines 7-11 (*"After drying the paints, their colour co-ordinates L, a and b (CIELAB 1976) where measured using a Gardener XL23 Colourmeter. A full description of the CIELAB system is given in Supplement No. 2 to CIE publication No. 15 (E-1.3.1) 1971)/(TC-1.3) 1978."*); U.S. Pat. No. 4,546,045 (Claim "5. A method for reducing the temperature rise associated with sunlight exposure of heat sensitive polymeric substrates, which comprises coating the heat sensitive polymeric substrate with a coating composition comprising a film-forming polymer and an effective amount of an infrared reflective pigment, said coating composition having a CIELAB  $L^*$  value of up to 70 and resulting in the coating substrate reflecting at least 45 percent of impinging infrared energy."); U.S. Pat. No. 7,056,634 (Claim "1. A yellow toner comprising a yellow toner particle that contains at least a binder resin, a wax, and a yellow pigment containing a monoazo compound represented by a formula (1) as

*follows, wherein a value of  $a^*$  is in the range of -5 to +14 when  $b^*$  is +80.....”); U.S. Pat. No. 5,434,684 (Claim “3. An apparatus according to claim 1, wherein the color expression form is a form expressing color by  $L^*$ ,  $a^*$ , and  $b^*$  components.”); U.S. Pat. No. 4,403,866 (Claim “1. A process for making a paint that matches the color values of a standard liquid paint, said process utilizes a computer electrically connected to a multiplicity of metering pumps, each pump being individually connected to a supply of a component used in the paint, said components used in the paint being liquid containing binder for the paint, solvent for the paint and colorant in the form of dispersions or solutions, a vessel containing a recycle loop and mixing means, a pump tubularly connected to the vessel positioned in a recycle loop, a cell having a viewing window positioned in the recycle loop, a colorimeter having means to determine  $L^*$ ,  $a^*$  and  $b^*$  values of the paint positioned to view the window of the cell and being electrically connected to the computer, said process being controlled by the computer comprises the following steps: (1) providing the computer with (a) formula of the paint, (b)  $L^*$ ,  $a^*$  and  $b^*$  values of the liquid standard paint, (c) tolerance values of  $L^*$ ,  $a^*$  and  $b^*$  for the paint; (2) metering exact amounts of components of the paint into the mixing vessel by the metering pumps which are being controlled by the computer; (3) mixing said components to form a paint; (4) circulating the paint through said cell at a uniform shear rate; (5) measuring and determining  $L^*$ ,  $a^*$  and  $b^*$  values of the paint with the colorimeter; (6) transmitting said  $L^*$ ,  $a^*$  and  $b^*$  values to the computer; (7) determining color vectors of each colorant used to formulate said paint by adding a known amount of each colorant to the paint and for each addition repeating Steps (3)-(6) and determining the change in  $L^*$ ,  $a^*$  and  $b^*$  values; (8) comparing by the computer the  $L^*$ ,  $a^*$  and  $b^*$  values of the paint to the  $L^*$ ,  $a^*$  and  $b^*$  values of the standard paint and calculating the difference between the values of the paint and the standard paint, and calculating the quantity of components to be added to the paint to bring the paint within  $L^*$ ,  $a^*$  and  $b^*$  tolerance values of the paint; and (9) repeating steps (2)-(6) and (8) at least once in the event the paint is not within the  $L^*$ ,  $a^*$  and  $b^*$  tolerance values for the paint to bring the paint within these tolerance values.”); U.S. Pat. No. 5,105,267 (Claim “2. The color conversion*

apparatus to claim 1, in which said colorimetric system converting means is a ROM containing data for converting the separated color data signals of R (red), G (green), and B (blue) to color data of factors  $l^*$ ,  $a^*$  and  $b^*$  defining a color space.”); U.S. Pat. No. 5,116,711 (Claim “1. A black developer for developing electrostatic latent images, comprising: (1d) a black toner composition containing a black toner which in turn contains at least a binder resin and two or more colorants, and hydrophobic silica fine powder and (2d) a ferrite carrier coated with a mixture of a fluorine-containing resin and a styrene type resin in a weight ratio of 90:10 to 20:80, wherein the binder resin comprises a styrene-acrylic acid ester type resin or a polyester ester, the ferrite carrier has an average particle size of 30-60 microns, and the ferrite carrier is coated with 0.01 to 5 wt. % based on the carrier of the mixture of the fluorine-containing resin and the styrene type resin; the black toner having a volume particle size of 11.0 to 14.0 microns, containing 30% by number or less of particles having sizes below 6.35 microns and containing 9% by weight or less of particles having sizes above 20.2 microns; the black toner composition having an agglomeration degree of 25% or below and an apparent density of 0.2 to 1.5 g/cm.<sup>sup.3</sup>; the black toner having an apparent viscosity of 100.degree. C. of 10. <sup>sup.4</sup> to 5.times.10.<sup>sup.5</sup> poise, an apparent viscosity of 90.degree. C. of 5. <sup>sup.4</sup> to 5.times.10.<sup>sup.6</sup> poise, a DSC heat-absorption peak at 58. <sup>sup.4</sup> to 72.degree. C., and a gloss of 5.0% or higher; the black toner having chromatically values of  $a^*=-3.5$  to 6.5,  $b^*=-6.0$  to 4.0, and  $L^*=26.0$  to 36.0; the black toner showing a triboelectric charge of -5 to -20 micro- C/g with respect to the ferrite carrier coated with the mixture of the fluorine- containing resin and the styrene type resin containing 70 wt. % or more of carrier particles having sizes of 250 mesh-pass and 350 mesh- on and the black toner having a spectral reflectance of 60% or more in an infrared region of 900 to 1,000 nm.”)

The Applicants believe and have provided evidence that one of ordinary skill in the art at the time the invention would understand that the term "CIELAB value" does not refer to a trademark or tradename, but is an acronym for a descriptive standard which does not change over time, and that the  $b^*$  value is consistent with usage in the present specification, is expressed in terms common

to the prior art, and understandable to one of ordinary skill in the art at the time the invention was made, and, therefore, the usage of the terms is not indefinite.

**2. Rejection of Claims 1, 2, 5, 7, 9-17, 21, 22, 24-26, 28-36 and 39 Under 35 U.S.C. §102:**

The Examiner has rejected Claims 1, 2, 5, 7, 9-17, 21, 22, 24-26, 28-36 and 39 35 U.S.C. 102(b) as being anticipated by Maier et al., indicating that, in regard to claims 1, 2, 5, 7, 17, 21, 22, 24-26, 36 and 39, Maier et al. teach a shaped article such as a film, sheet, bottle (a container), tube, fiber or rod having a continuous first polymer phase having dispersed therein microbeads of a crosslinked second polymer that are bordered by void space, acrylic acid, methyl acrylate or methyl methacrylate is a typical monomer for making the crosslinked second polymer for making the microbeads, the monomers from which the second polymer is derived, acrylic acid, methyl acrylate or methyl methacrylate, therefore, comprise less than 10 wt% styrenic monomers and less than one wt% styrenic monomers as claimed in claims 2 and 22 (i.e. 0 wt% styrenic monomers). The Examiner indicates that the compositions taught by Maier et al. have superior thermal stability, in regard to the recitation of claim 21 that the microbeads are made from acrylic crosslinking monomers, Maier et al. teach that the microbeads are made from methyl methacrylate monomers, which are acrylic crosslinking monomers, the recitation "experiencing a 2% weight loss above 270°C" defines thermally stable as experiencing a weight loss of less than 2% at temperatures below 270°C; since Maier et al. teach the shaped article comprising the microbeads as claimed by Applicant having the same composition as that claimed by Applicant, the microbeads of Maier et al. are necessarily thermally stable as Applicant has defined thermally stable, Maier et al. teach that the article is virtually free of the "yellowing with time" problem that "plagues cellulose-based papers, and, therefore, Maier et al. teach that the microbeads have a change in CIELAB value b\* of less than 0.2 towards yellowness on exposure to UV light of 50 Klux for one week. In an Office Action dated August 8, 2006, the Examiner indicates that "*Applicant's arguments presented on pages 11-14 of Amdt. F regarding the 35 U.S.C. 102 rejection have been fully considered but are not persuasive.*

*Applicant has not shown that the samples listed in Table AF-1 are indeed samples of Maier et al. The data for the second sample supports the Office's rejection. Applicant has not explained how the samples listed in Table AF-1 address the rejection of record. Applicant has not addressed the basis of rejection of record regarding the claimed amount of styrenic monomers.*

*Applicant has not shown that the samples listed in Table AF-2 are indeed samples of Maier et al.: for example, all the samples in Table AF-2 are identified as "Comparative" samples, which would not be samples of Maier et al. Applicant has not explained how the samples listed in Table AF-2 address the rejection of record. Applicant has not addressed the basis of rejection of record regarding the claimed amount of styrenic monomers."*

Maier (U.S. Pat. No. 5, 275, 854) discloses a shaped article comprising a continuous oriented thermoplastic polymer matrix having dispersed therein microbeads of a polymer which are at least partially bordered by void space, the microbeads being present in an amount of about 5-50% weight based on the weight of said oriented thermoplastic, said void space occupying about 2-60% by volume of said shaped article. Preferably, the microbeads are cross-linked to an extent they will be resilient and elastic at the orientation temperature, and are coated with a slip agent. The shaped article is preferably in the form of a sheet, fibers, or other molded article, and preferably has a relatively low specific gravity and whiteness.

The present invention relates to a shaped article comprising a continuous first polymer phase having dispersed therein microbeads of a cross-linked second polymer, wherein the cross-linked second polymer is derived from monomers that comprise less than 10 wt% styrenic monomers and are selected from the group consisting of acrylic and allylic monomers. The microbeads are bordered by void space and are thermally stable, experiencing a 2% weight loss above 270°C. The microbeads also have a change in CIELAB value b\* towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in b\* is less than or equal to 0.2.

A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently described in a single prior art

reference. The identical invention must be shown in as complete detail as is contained in the claim. Maier et al. does not disclose shaped articles or thermal receiver sheets comprising microbeads having less than 10 wt% styrenic monomers, that have a change in CIELAB value  $b^*$  of less than 0.2 towards yellowness on exposure to UV light of 50 Klux for one week and a thermal stability of a 2% weight loss above 270°C. The microbeads disclosed in Maier et al. do not inherently meet the limitations of the present claims. This is demonstrated by the following Tables AF-1 and AF-2.

**TABLE AF-1**

**YELLOWNESS EVALUATION**

<i>Linear monomer</i>		<i>Crosslink monomer</i>		<i>Yellowness <math>\Delta b^*</math></i>	<b>Comparative (C) or Invention (I) According to the present invention</b>	<b>Location in Maier</b>
<i>Name</i>	<i>amt wt%</i>	<i>Name</i>	<i>amt wt%</i>	<i>Target <math>\leq 0.2</math></i>		
<i>Methyl methacrylate</i>	70%	<i>Divinyl benzene</i>	30%	0.254	C	Col. 7, lines 44-50 (Linear, x-link), Ex. 15, 17, 23 & 25
<i>Methyl methacrylate</i>	90%	<i>Divinyl benzene</i>	10%	0.150	I	Col. 7, lines 44-50 (Linear, x-link), Ex. 15, 17, 23 & 25

The italics print in the first 5 columns of Table AF-1 is an excerpt from Table 1, pg. 23, of the specification as originally filed. No additional data or new matter has been added to these columns. The sixth column indicates whether the

sample is a comparative sample or an inventive sample according to the present invention. The seventh column identifies the location of the sample composition in Maier. As can be seen from Table AF-1, the disclosure of Maier does not disclose materials that inherently satisfy the requirement that “the microbeads have a change in CIELAB value b\* towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in b\* is less than or equal to 0.2”.

**Table AF-2**

**THERMAL STABILITY EVALUATION SUMMARY**

<i>Linear monomer</i>		<i>Crosslink monomer</i>		<i>2% loss temp</i>	<i>Comparative (C) or Invention (I) According to the present invention</i>	<i>Location in Maier</i>
<i>Name</i>	<i>amt wt%</i>	<i>Name</i>	<i>amt wt%</i>	<i>Target &gt;270 °C</i>		
<i>Methyl methacrylate</i> (Table 5 as filed)	70%	<i>allyl methacrylate</i>	30%	200	C	Col. 7, lines 44-50 (Linear, x-linker)
<i>Methyl methacrylate</i> (Declaration of Smith)	70%	<i>Divinylbenzene</i>	30%	300	C	Col. 7, lines 44-50 (Linear, x-link), Ex. 15, 17, 23 & 25, YELLOW (See Table 1, pg. 20 ( $\Delta b^*$ 0.254)
<i>Methyl methacrylate</i> (Table 5 as filed)	70%	<i>diallyl maleate</i>	30%	<200	C	Col. 7, lines 44-50 (Linear, x-linker)



The italics print in the first 5 columns of Table AF-2 is excerpted from Table 5, identified in the first column of Table AF-2, from pg. 26 of the specification as originally filed, and a sample, originally present in Table 1 and measured for yellowness, which was then measured for thermal stability and included in the Declaration of Smith, submitted in the response, dated November 4, 2003. No additional data or new matter has been added to these columns. The sixth column indicates whether the sample is a comparative sample or an inventive sample according to the present invention. The seventh column identifies the location of the sample composition in Maier. As can be seen from Table AF-2, the disclosure of Maier does not disclose materials that inherently satisfy the requirement that “the microbeads are thermally stable, experiencing a 2% weight loss above 270°C”. In addition, Maier fails to disclose a microbead having less than 10 wt% styrenic monomers, that have a change in CIELAB value b\* of less than 0.2 towards yellowness on exposure to UV light of 50 Klux for one week and as well as a thermal stability of a 2% weight loss above 270°C.

Therefore, since Maier fails to expressly or inherently disclose microbeads having less than 10 wt% styrenic monomers, which are thermally stable, experiencing a 2% weight loss above 270°C, and which also have a change in CIELAB value b\* towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in b\* is less than or equal to 0.2, Maier fails to anticipate the present claims.

In regard to claims 9-16 and 28-35, these claims benefit from dependence on claims 1 and 21, which, as discussed above, Applicants believe is patentable with respect to Maier.

### **3. Rejection Of Claims 18, 19, 37, 38 Under 35 U.S.C. §103(a):**

The Examiner has rejected Claims 18, 19, 37 and 38 under 35 U.S.C. 103(a) as being unpatentable over Maier et al., indicating that Maier et al. teach that methyl methacrylate is a preferred monomer for making the crosslinked polymer and, although Maier et al. fail to explicitly teach that the second polymer is derived from monomers comprising more than 20 wt% of crosslinking monomer, Maier et al. discloses that the polymer of the microbeads is crosslinked to the extent of having a resiliency or elasticity at orientation temperatures of the

matrix polymer such that a generally spherical shape of the crosslinked polymer is maintained after orientation of the matrix polymer, making it obvious to one of ordinary skill in the art at the time the invention was made to have varied the concentration of the crosslinking agent of Maier et al. in order to achieve the optimal resiliency or elasticity at orientation temperatures of the matrix polymer depending on the monomer used as the monomer from which the second polymer is derived and depending on the particular desired end user-result, in the absence of unexpected results. In an Office Action dated August 8, 2006, the Examiner indicates that *"Applicant's arguments presented on pages 14-19 of Amdt. F regarding the 35 U.S.C. 103 rejection of claims 18, 19, 37 and 38 have been fully considered but are not persuasive."*

*Applicant's statement in the third full paragraph of page 15 of Amdt. F does not appear to argue anything other than what was argued earlier in pages 11-14 of Amdt. F in response to the 35 U.S.C. 102 rejection.*

*Applicant's statement in the fourth full paragraph of page 15 of Amdt. F, and Applicant's presentation of the table at the top of page 16 of Amdt. F, does not address the rejection of record.*

*Applicant's statement on page 16 of Amdt. F that "[t]he thermal stability for a 5% crosslink monomer, per the examples of Maier, has not been measured" indicates that Applicant has not addressed the rejection of record regarding the thermal stability limitation. Applicant's statement that "... would not be expected..." is speculation, and Applicant has not explained how a discussion of a "sample with 10% crosslink monomer" addresses the rejection of record.*

*In response to Applicant's arguments on page 17 of Amdt. F, Applicant has not provided any basis for Applicant's "extrapolation of actual test data". Applicant has not provided any basis for an expectation that the extrapolation is correct. Applicant's attempt to explain what was meant by "predict" further supports the position of the Office: "testing" on "a particular combination" must be performed to determine the thermal stability of the "particular combination". Applicant has not provided any basis for an expectation that "once at least two data points of a composition, varying the amount of crosslink monomer, have been determined to establish a line, and hence, a trend, predictions... crosslinking*

*monomer." For example, two experimental points on a graph cannot conclusively establish a "line" (a linear relationship between the x and y values of the graph) that would enable one of ordinary skill in the art to extrapolate with any certainty. Applicant's argument in the last full sentence of page 18 of Amdt. F does not address the rejection of record."*

Maier (U.S. Pat. No. 5, 275, 854) discloses a shaped article comprising a continuous oriented thermoplastic polymer matrix having dispersed therein microbeads of a polymer which are at least partially bordered by void space, the microbeads being present in an amount of about 5-50% weight based on the weight of said oriented thermoplastic, said void space occupying about 2-60% by volume of said shaped article. Preferably, the microbeads are cross-linked to an extent they will be resilient and elastic at the orientation temperature, and are coated with a slip agent. The shaped article is preferably in the form of a sheet, fibers, or other molded article, and preferably has a relatively low specific gravity and whiteness.

The present invention relates to a shaped article comprising a continuous first polymer phase having dispersed therein microbeads of a cross-linked second polymer, wherein the cross-linked second polymer is derived from monomers that comprise less than 10 wt% styrenic monomers and are selected from the group consisting of acrylic and allylic monomers. The microbeads are bordered by void space and are thermally stable, experiencing a 2% weight loss above 270°C. The microbeads also have a change in CIELAB value b\* towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in b\* is less than or equal to 0.2.

To establish a prima facie case of obviousness, there must be some suggestion or motivation in the reference or in the general knowledge available to one skilled in the art to modify the reference, there must be a reasonable expectation of success, and the prior art reference must teach or suggest all the claim limitations.

Maier et al. teach a broad recitation of possible monomers at col. 7, lines 13-56. Maier fails to disclose microbeads of a cross-linked second polymer, wherein the cross-linked second polymer is derived from monomers that comprise less

than 10 wt% styrenic monomers and are selected from the group consisting of acrylic and allylic monomers, are bordered by void space, are thermally stable, experiencing a 2% weight loss above 270°C, and which also have a change in CIELAB value b\* towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in b\* is less than or equal to 0.2.

The examples in Maier '854 use either 95 mole % methyl methacrylate and 5 mole % divinylbenzene (crosslinker) or 70 mole % methyl methacrylate and 30 mole % divinylbenzene (crosslinker). This calculates to 93.6 wt % / 6.4 wt % and 64.2 wt % / 35.8 wt % respectively.

Linear monomer		Crosslink monomer		2% loss temp
Name	amt wt%	Name	amt wt%	Target $\geq 270^{\circ}\text{C}$
Methyl methacrylate	70%	Divinylbenzene	30%	300
Methyl methacrylate	90%	Divinylbenzene	10%	260
Methyl methacrylate	95%	Divinylbenzene	5%	<260

The above table, copied from the Declaration of Smith, shows the 2% temperature loss for methyl methacrylate crosslinked with different amounts of divinylbenzene. The thermal stability data for 30% and 10% divinylbenzene crosslink monomer was measured on the same samples used to measure the yellowness as shown in Table 1 of the subject patent application, page 20. As shown in the Table above and in Table 6 of the subject patent application, pages 23-24, thermal stability decreases with decreasing crosslink monomer. This information, in combination with the results shown for the 30% and 10% crosslink monomer in the above table, indicates the same trend holds true for methacrylic, acrylic or styrenic crosslink monomers. The thermal stability for a 5% crosslink monomer, per the examples of Maier, has not been measured. However, since the sample with 10% crosslink monomer in the above Table failed to provide the required thermal stability, in light of the trends identified in Table 6 of the specification, the sample with 5% crosslink monomer would not be expected to provide the necessary thermal stability when a sample tested with a higher level of

crosslink monomer has failed. Table AF-1, above, already illustrates that the yellowness of a sample with 30% divinylbenzene crosslink monomer is unacceptable. Therefore, Maier fails to teach or suggest microbeads of a cross-linked second polymer, wherein the cross-linked second polymer is derived from monomers that comprise less than 10 wt% styrenic monomers, which are thermally stable, experiencing a 2% weight loss above 270°C and which also have a change in CIELAB value b\* towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in b\* is less than or equal to 0.2

The Examiner has previously found this unpersuasive, indicating “*As stated in paragraph 5 of the Advisory Action (Paper 10), Applicant asserts a showing of unexpected results, but Applicant has not met the burden on Applicant to establish that these results are unexpected and significant in that the evidence relied upon does not establish “that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance” Ex parte Gelles, 22 USPQ2d 1318, 1319 (Bd. Pat. App. & Inter. 1992) because the claimed invention has not been compared with the closest prior art which is commensurate in scope with the claims as required by MPEP 716.02(b); Dennis E. Smith states on page 2 of his Declaration that “The thermal stability for a 5% crosslink monomer, per the examples of Maier, has not been measured”. The first two lines of the table provided in the declaration are taken from the specification of the instant application and the third line of the table is speculatively extrapolated data as indicated on page 2 of the declaration. Any validity of the third line of this table and of the explained reasoning behind making the extrapolation is destroyed by Applicants own statement that “it is difficult to predict what amount of a specific crosslinking monomer will produce a desired thermal stability”*”. The term “extrapolate” was used to describe the means of making the above conclusion. The Compact Oxford Dictionary defines the term “extrapolate” as: “*1 extend the application of (a method, conclusion, etc.) to different or larger groups. 2 extend (a graph) by inferring unknown values from trends in the known data.*”. The conclusion regarding the % of crosslink monomer was reached, based on the extrapolation of actual test data, once data points had established that a particular combination of materials was useful. The

term “predict” was used to indicate that, unless testing was conducted, one could not tell beforehand, in the absence of data, whether or not a particular combination of materials would supply the necessary thermal stability. To rephrase Applicants previous statement, one cannot tell in advance, without testing, whether or not a material composition will provide the necessary claimed results. However, once at least two data points of data have been generated, establishing a line, to indicate that a particular combination of materials will work, predictions can be made about the useful amount of crosslinking monomer in a material of the same combination. Thus, as stated in the Declaration, extrapolating the trend shows that reducing the amount of styrenic monomer to less than 10wt% would result in a 2% weight loss at a temperature below 260°C. Thus, a microbead formed from a polymer including a styrenic monomer in an amount less than 10wt% would not have Applicants’ claimed thermal stability, that is, a 2% weight loss above 270°C.

Maier et al. does not recognize the problem of thermal stability in various formulations of microbeads. Maier et al. also does not recognize the problem of yellowness in the microbeads, or the resultant shaped article or thermal transfer receiving sheet, under exposure to UV light. As shown in Applicants’ specification in Tables 4 and 5 on pages 22 and 23, it is difficult to predict in advance, without analyzing actual formulations, what amount of a specific crosslinking monomer will produce a desired thermal stability. For example, in Table 4, numerous examples having 30% crosslinking monomer are within Applicants’ claimed thermal stability, while another crosslinking monomer at 30%, diethylene glycol diacrylate, is outside the claimed thermal stability. Applicants have recognized thermal stability and yellowness as problems in the area of shaped articles and thermal transfer receiving sheets, and have identified a criterium for forming such shaped articles and thermal transfer receiving sheets. The criterium for achieving the desired properties of yellowness and thermal stability is selection of microbeads having less than 10 wt % styrenic monomers selected from the group consisting of acrylic and allylic monomers and a 2% weight loss at a temperature above 270°C. In addition, Maier et al. does not teach use of less than 10 wt% styrenic monomers while maintaining thermal stability of the resultant microbead. Styrenic monomers such as divinylbenzene are exemplified at col. 7, lines 44-46,

of Maier et al. as cross-linking agents, and are used in the examples. Tables 1, 2, 5, 6, 9, and 10 exemplify polystyrene as a cross-linker in an amount of either 5% or 30%. However, Maier et al. does not disclose the thermal stability of the microbeads having 5% polystyrene. Reducing the amount of styrenic monomer (polystyrene) to below 10% would result in a 2% weight loss at a temperature less than 270°C, as shown in the attached Declaration of Dennis E. Smith, previously submitted on November 4, 2003. As shown in the Declaration of Smith, a reduction of styrenic monomers alone results in weight loss at a decreased temperature. The use of 30 wt % divinyl benzene results in a 2% weight loss at a temperature of 300°C, and the use of 10wt% divinyl benzene results in a 2% weight loss at a temperature of 260°C. Maier et al. therefore does not teach or suggest that a formulation of a microbead with less than 10 wt% styrenic monomers would have a thermal stability of a 2% weight loss above 270°C, a have a change in CIELAB value b\* of less than 0.2 towards yellowness on exposure to UV light of 50 Klux for one week and a thermal stability of a 2% weight loss above 270°C, let alone both, as presently claimed.

Maier et al. does not disclose all the present claim limitations, as there is no mention that shaped articles or thermal receiver sheets comprising microbeads having a have a change in CIELAB value b\* of less than 0.2 towards yellowness on exposure to UV light of 50 Klux for one week and/or a thermal stability of a 2% weight loss above 270°C.

Applicants have shown, in the attached Declaration of Dennis E. Smith, and in the specification, the unexpected results of improved thermal stability and decreased yellowness achieved with the claimed invention, which problems are not taught, suggested, or resolved in Maier et al.

Since Maier fails to suggest the modification necessary to achieve the present claims, fails to provide any likelihood of success, and fails to disclose all the limitations of the present claims, and, in light of surprising results, the Applicants believe that the presently claimed invention is not obvious in view of Maier.

**4. Rejection Of Claims 8, and 27 Under 35 U.S.C. §103(a):**

The Examiner has rejected Claims 8 and 27 under 35 U.S.C. 103(a) as being unpatentable over Maier et al. in view of Saito et al., as Maier et al. teach the article as discussed above, and, although Maier et al. fail to teach that the microbeads comprise a copolymer derived from methylmethacrylate and 1,6-hexanediol diacrylate or from methylmethacrylate and trimethylol propane triacrylate. Saito et al. disclose a transfer sheet having a thermally transferable protective layer and optionally a protective layer having an acrylic resin to improve the fastness properties, such as rubbing fastness and scratch fastness, of the protective layer/s, Saito et al. disclose that methylmethacrylate, 1,6-hexanediol diacrylate and trimethylol propane triacrylate are suitable acrylic monomers, Saito et al. disclose the use of the disclosed acrylic monomers as a mixture of two or more of the monomers, therefore, Saito et al. disclose the use of copolymers derived from methylmethacrylate and 1,6-hexanediol diacrylate or from methylmethacrylate and trimethylol propane triacrylate, so that one of ordinary skill in the art would have recognized to have used a copolymer of methylmethacrylate and 1,6-hexanediol diacrylate or of methylmethacrylate and trimethylol propane triacrylate as the acrylic polymer of Maier et al. in order to improve the fastness properties, such as rubbing fastness and scratch fastness, of the article of Maier et al. as taught by Saito et al, making it obvious to one of ordinary skill in the art at the time the invention was made to have used a copolymer of methylmethacrylate and 1,6-hexanediol diacrylate or of methylmethacrylate and trimethylol propane triacrylate as the acrylic polymer of Maier et al. in order to improve the fastness properties, such as rubbing fastness and scratch fastness, of the article of Maier et al. as taught by Saito et al. In an Office Action dated August 8, 2006, the Examiner indicates that “*Applicant's arguments presented on pages 19-22 of Amdt. F regarding the 35 U.S.C. 103 rejection of claims 8 and 27 have been fully considered but are not persuasive.*”

*Applicant's statement in the first full paragraph of page 21 of Amdt. F does not appear to argue anything other than what was argued earlier in pages 11-14 of Amdt. F in response to the 35 U.S.C. 102 rejection. Applicant's statement*



*regarding the amount of styrenic monomers does not address the rejection of record.*

*Applicant's statement that "it is difficult to predict in advance, without analyzing actual formulations..." further supports the position of the Office: "analyzing actual formulations" must be performed to determine the thermal stability of the "actual formulations",*

*Applicant's statement regarding the amount of styrenic monomers does not address the rejection of record."*

Maier (U.S. Pat. No. 5, 275, 854) discloses a shaped article comprising a continuous oriented thermoplastic polymer matrix having dispersed therein microbeads of a polymer which are at least partially bordered by void space, the microbeads being present in an amount of about 5-50% weight based on the weight of said oriented thermoplastic, said void space occupying about 2-60% by volume of said shaped article. Preferably, the microbeads are cross-linked to an extent they will be resilient and elastic at the orientation temperature, and are coated with a slip agent. The shaped article is preferably in the form of a sheet, fibers, or other molded article, and preferably has a relatively low specific gravity and whiteness.

Saito (U.S. Pat. No. 6,043,194) discloses a protective layer transfer sheet comprising: a substrate sheet; and a thermally transferable protective layer provided on at least a part of one side of the substrate sheet, the protective layer comprising at least an aromatic polycarbonate resin which is soluble in a nonhalogenated solvent and has a glass transition temperature  $T_g$  of 80.degree. C. or above. There is also provided a print comprising a substrate having, on at least one side thereof, at least a dye image and a protective layer covering at least a part of the image, the protective layer having been formed by transfer from the above protective layer transfer sheet.

The present invention relates to a shaped article comprising a continuous first polymer phase having dispersed therein microbeads of a cross-linked second polymer, wherein the cross-linked second polymer is derived from monomers that comprise less than 10 wt% styrenic monomers and are selected from the group consisting of acrylic and allylic monomers. The microbeads are bordered by void

space and are thermally stable, experiencing a 2% weight loss above 270°C. The microbeads also have a change in CIELAB value  $b^*$  towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in  $b^*$  is less than or equal to 0.2.

To establish a prima facie case of obviousness, there must be some suggestion or motivation in the reference or in the general knowledge available to one skilled in the art to modify the reference, there must be a reasonable expectation of success, and the prior art reference must teach or suggest all the claim limitations.

Maier et al. teach a broad recitation of possible monomers at col. 7, lines 13-56. Maier fails to disclose microbeads of a cross-linked second polymer, wherein the cross-linked second polymer is derived from monomers that comprise less than 10 wt% styrenic monomers and are selected from the group consisting of acrylic and allylic monomers, are bordered by void space, are thermally stable, experiencing a 2% weight loss above 270°C, and which also have a change in CIELAB value  $b^*$  towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in  $b^*$  is less than or equal to 0.2. Saito also fails to disclose microbeads of a cross-linked second polymer, wherein the cross-linked second polymer is derived from monomers that comprise less than 10 wt% styrenic monomers and are selected from the group consisting of acrylic and allylic monomers. Saito fails to mention microbeads bordered by void space. Saito fails to disclose microbeads which are thermally stable, experiencing a 2% weight loss above 270°C, and which also have a change in CIELAB value  $b^*$  towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in  $b^*$  is less than or equal to 0.2.

Maier et al. does not recognize the problem of thermal stability in various formulations of microbeads. Maier et al. also does not recognize the problem of yellowness in the microbeads, or the resultant shaped article or thermal transfer receiving sheet, under exposure to UV light. Saito also fails to mention the problems of thermal stability and yellowness as presently defined in the claims. As discussed above, it is difficult to predict in advance, without analyzing actual formulations, what amount of a specific crosslinking monomer will produce a desired thermal

stability, what composition will produce a particular change in yellowness and what compositions will provide both. Applicants have recognized thermal stability and yellowness as problems in the area of shaped articles and thermal transfer receiving sheets, and have identified a criterium for forming such shaped articles and thermal transfer receiving sheets. The criterium for achieving the desired properties of yellowness and thermal stability is selection of microbeads having less than 10 wt % styrenic monomers, and are selected from the group consisting of acrylic and allylic monomers. Maier and Saito fail to provide any likelihood of success in producing a microbead having a change in CIELAB value  $b^*$  of less than 0.2 towards yellowness on exposure to UV light of 50 Klux for one week and/or a thermal stability of a 2% weight loss above 270°C.

Maier and Saito do not disclose all the present claim limitations, as there is no mention that shaped articles or thermal receiver sheets comprising microbeads having a change in CIELAB value  $b^*$  of less than 0.2 towards yellowness on exposure to UV light of 50 Klux for one week and/or a thermal stability of a 2% weight loss above 270°C.

Since Maier and Saito fail to suggest the modification necessary to achieve the present claims, fail to provide any likelihood of success, and fail to disclose all the limitations of the present claims, the Applicants believe that the presently claimed invention is not obvious in view of Maier and Saito.

**5. Rejection Of Claim 40 Under 35 U.S.C. §103(a):**

The Examiner has rejected Claim 40 under 35 U.S.C. 103(a) as being unpatentable over Maier et al. in view of Hart et al, as Maier et al. teach the article as discussed above, and, although Maier et al. fail to teach that the shaped article is coated with a slip agent comprising silica or alumina, Hart et al. disclose a thermal transfer printing receiver sheet that is coated with a coating that contains a silica slip agent to improve the slip, anti-blocking and general handling characteristics of the sheet so that one of ordinary skill in the art would have recognized to have coated the article with a slip agent in order to improve the slip, anti-blocking and general handling characteristics of the article as taught by Hart et al, making it obvious to one of ordinary skill in the art at the time the invention was made to have to have coated the article with a slip agent in order to improve

the slip, antiblocking and general handling characteristics of the article as taught by Hart et al. In an Office Action dated August 8, 2006, the Examiner indicates that “*Applicant's arguments presented on pages 22-24 of Amdt. F regarding the 35 U.S.C. 103 rejection of claim 40 have been fully considered but are not persuasive.*”

*Applicant's statement in the paragraph bridging pages 22 and 23 of Amdt. F does not appear to argue anything other than what was argued earlier in pages 11-14 of Amdt. F in response to the 35 U.S.C. 102 rejection. Applicant's statement regarding the amount of styrenic monomers does not address the rejection of record. Applicant's arguments on page 24 of Amdt. F depend upon Applicant's arguments in response to the 35 U.S.C. 102 rejection, which have been addressed above in this Office Action.”*

Maier (U.S. Pat. No. 5, 275, 854) discloses a shaped article comprising a continuous oriented thermoplastic polymer matrix having dispersed therein microbeads of a polymer which are at least partially bordered by void space, the microbeads being present in an amount of about 5-50% weight based on the weight of said oriented thermoplastic, said void space occupying about 2-60% by volume of said shaped article. Preferably, the microbeads are cross-linked to an extent they will be resilient and elastic at the orientation temperature, and are coated with a slip agent. The shaped article is preferably in the form of a sheet, fibers, or other molded article, and preferably has a relatively low specific gravity and whiteness.

Hart (U.S. Pat. No. 5,059,579) discloses a thermal transfer printing (TTP) receiver sheet for use in association with a compatible donor sheet, comprises a supporting substrate having, on at least one surface thereof, (a) a dye-receptive receiving layer to receive a dye thermally transferred from the donor sheet, said receiver sheet additionally comprises, on at least one surface thereof, (b) an antistatic layer, said antistatic layer preferably being on a second surface of said substrate. The antistatic layer preferably comprises (a) a polychlorhydrin ether of an ethoxylated hydroxyamine and (b) a polyglycol amine, the total alkali metal content of components (a) and (b) not exceeding 0.5% of the combined weight of (a) and (b).

The present invention relates to a shaped article comprising a continuous first polymer phase having dispersed therein microbeads of a cross-linked second polymer, wherein the cross-linked second polymer is derived from monomers that comprise less than 10 wt% styrenic monomers and are selected from the group consisting of acrylic and allylic monomers. The microbeads are bordered by void space and are thermally stable, experiencing a 2% weight loss above 270°C. The microbeads also have a change in CIELAB value  $b^*$  towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in  $b^*$  is less than or equal to 0.2.

To establish a prima facie case of obviousness, there must be some suggestion or motivation in the reference or in the general knowledge available to one skilled in the art to modify the reference, there must be a reasonable expectation of success, and the prior art reference must teach or suggest all the claim limitations.

Maier et al. teach a broad recitation of possible monomers at col. 7, lines 13-56. Maier fails to disclose microbeads of a cross-linked second polymer, wherein the cross-linked second polymer is derived from monomer that comprise less than 10 wt% styrenic monomers and are selected from the group consisting of acrylic and allylic monomers, are bordered by void space, are thermally stable, experiencing a 2% weight loss above 270°C, and which also have a change in CIELAB value  $b^*$  towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in  $b^*$  is less than or equal to 0.2. Hart also fails to disclose microbeads of a cross-linked second polymer, wherein the cross-linked second polymer is derived from monomers that comprise less than 10 wt% styrenic monomers and are selected from the group consisting of acrylic and allylic monomers, and which also have a change in CIELAB value  $b^*$  towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in  $b^*$  is less than or equal to 0.2.

Maier et al. does not recognize the problem of thermal stability in various formulations of microbeads. Maier et al. also does not recognize the problem of yellowness in the microbeads, or the resultant shaped article or thermal transfer receiving sheet, under exposure to UV light. Hart also fails to mention the problems

of yellowness as presently defined in the claims. As discussed above, it is difficult to predict in advance, without analyzing actual formulations, what amount of a specific crosslinking monomer will produce a desired thermal stability, what composition will produce a particular change in yellowness and what compositions will provide both. Applicants have recognized thermal stability and yellowness as problems in the area of shaped articles and thermal transfer receiving sheets, and have identified a criterium for forming such shaped articles and thermal transfer receiving sheets. The criterium for achieving the desired properties of yellowness and thermal stability is selection of microbeads having less than 10 wt % styrenic monomers, and are selected from the group consisting of acrylic and allylic monomers. Maier and Hart fail to provide any likelihood of success in producing a microbead having a change in CIELAB value  $b^*$  of less than 0.2 towards yellowness on exposure to UV light of 50 Klux for one week in combination with a thermal stability of a 2% weight loss above 270°C.

Maier and Hart do not disclose all the present claim limitations, as there is no mention that shaped articles or thermal receiver sheets comprising microbeads having a change in CIELAB value  $b^*$  of less than 0.2 towards yellowness on exposure to UV light of 50 Klux for one week and a thermal stability of a 2% weight loss above 270°C.

Since Maier and Hart fail to suggest the modification necessary to achieve the present claims, fail to provide any likelihood of success, and fail to disclose all the limitations of the present claims, the Applicants believe that the presently claimed invention is not obvious in view of Maier and Hart.

**6. Rejection Of Claims 42 and 43 Under 35 U.S.C. §103(a):**

The Examiner has rejected Claims 42 and 43 under 35 U.S.C. 103(a) as being unpatentable over Maier et al. in view of Harrison et al, indicating that Maier et al. teach a sheet having a continuous first polymer phase having dispersed therein microbeads of a crosslinked second polymer that are bordered by void space, that acrylic acid, methyl acrylate or methyl methacrylate is a typical monomer for making the crosslinked second polymer for making the microbeads, the monomers from which the second polymer is derived, acrylic acid, methyl acrylate or methyl methacrylate comprise not more than 10 wt%

styrenic monomer, that acrylic acid, methyl acrylate and methyl methacrylate are acrylic monomers, as acrylates are polymers of acrylic acid or its esters, as evidenced by Hawley's Condensed Chemical Dictionary, the compositions taught by Maier et al. have superior thermal stability, Maier et al. teach the sheet comprising the microbeads as claimed by Applicant having the same composition as claimed by Applicant, and therefore, the microbeads of Maier et al. are necessarily thermally stable where thermally stable means that the temperature at which the microbeads experience a 2% weight loss is above 270°C, the article is virtually free of the "yellowing with time" problem that "plagues cellulose-based papers, the microbeads are free of colorant, and, although Maier et al. fail to teach that the sheet is a dye diffusion thermal transfer dye receiving sheet, Harrison et al. disclose a dye diffusion thermal transfer dye receiving element comprising a support comprising a continuous oriented polymer matrix having dispersed therein microbeads of a cross-linked polymer which are at least partially bordered by void space, the dye-receiving element is shaped in sheet form so that one of ordinary skill in the art would have recognized to have used the sheet of Maier et al. as a dye diffusion thermal transfer dye receiving sheet since it is well known to use a sheet comprising a continuous polymer matrix having dispersed therein microbeads of a crosslinked polymer which are at least partially bordered by void space such as the sheet of Maier et al. as a dye diffusion thermal transfer dye receiving sheet as taught by Harrison et al, making it obvious to one of ordinary skill in the art at the time the invention was made to have used the sheet of "Maier et al. as a dye diffusion thermal transfer dye receiving sheet since it is well known to use a sheet comprising a continuous polymer matrix having dispersed therein microbeads of a cross-linked polymer which are at least partially bordered by void space such as the sheet of Maier et al. as a dye diffusion thermal transfer dye receiving sheet as taught by Harrison et al. In an Office Action dated August 8, 2006, the Examiner indicates that "*Applicant's arguments presented on pages 25-28 of Amdt. F regarding the 35 U.S.C. 103 rejection of claims 42 and 43 have been fully considered but are not persuasive.*

*Applicant's statement in the paragraph bridging pages 26 and 27 of Amdt. F does not appear to argue anything other than what was argued earlier in pages*

*11-14 of Amdt. F in response to the 35 U.S.C. 102 rejection. Applicant's statement regarding the amount of styrenic monomers does not address the rejection of record. Applicant's arguments on pages 27 and 28 of Amdt. F depend upon Applicant's arguments in response to the 35 U.S.C. 102 rejection, which have been addressed above in this Office Action.”*

Maier (U.S. Pat. No. 5, 275, 854) discloses a shaped article comprising a continuous oriented thermoplastic polymer matrix having dispersed therein microbeads of a polymer which are at least partially bordered by void space, the microbeads being present in an amount of about 5-50% weight based on the weight of said oriented thermoplastic, said void space occupying about 2-60% by volume of said shaped article. Preferably, the microbeads are cross-linked to an extent they will be resilient and elastic at the orientation temperature, and are coated with a slip agent. The shaped article is preferably in the form of a sheet, fibers, or other molded article, and preferably has a relatively low specific gravity and whiteness.

Harrison (U.S. Pat No. 5,100,862) discloses a dye-receiving element for thermal dye transfer including a support having thereon a polymeric dye image-receiving layer wherein the support includes a continuous oriented polymer matrix having dispersed therein microbeads of a cross-linked polymer coated with a slip agent and which are at least partially bordered by void space.

The present invention relates to a shaped article comprising a continuous first polymer phase having dispersed therein microbeads of a cross-linked second polymer, wherein the cross-linked second polymer is derived from monomers that comprise less than 10 wt% styrenic monomers and are selected from the group consisting of acrylic and allylic monomers. The microbeads are bordered by void space and are thermally stable, experiencing a 2% weight loss above 270°C. The microbeads also have a change in CIELAB value b\* towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in b\* is less than or equal to 0.2.

To establish a prima facie case of obviousness, there must be some suggestion or motivation in the reference or in the general knowledge available to



one skilled in the art to modify the reference, there must be a reasonable expectation of success, and the prior art reference must teach or suggest all the claim limitations.

Maier et al. teach a broad recitation of possible monomers at col. 7, lines 13-56. Maier fails to disclose microbeads of a cross-linked second polymer, wherein the cross-linked second polymer is derived from monomers that comprise less than 10 wt% styrenic monomers and are selected from the group consisting of acrylic and allylic monomers, are bordered by void space, are thermally stable, experiencing a 2% weight loss above 270°C, and which also have a change in CIELAB value b\* towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in b\* is less than or equal to 0.2. Harrison also fails to disclose microbeads of a cross-linked second polymer, wherein the cross-linked second polymer is derived from monomers that comprise less than 10 wt% styrenic monomers and are selected from the group consisting of acrylic and allylic monomers, are thermally stable, experiencing a 2% weight loss above 270°C, and which also have a change in CIELAB value b\* towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in b\* is less than or equal to 0.2.

Maier et al. does not recognize the problem of thermal stability in various formulations of microbeads. Maier et al. also does not recognize the problem of yellowness in the microbeads, or the resultant shaped article or thermal transfer receiving sheet, under exposure to UV light. Harrison also fails to mention the problems of thermal stability and yellowness as presently defined in the claims. As discussed above, it is difficult to predict in advance, without analyzing actual formulations, what amount of a specific crosslinking monomer will produce a desired thermal stability, what composition will produce a particular change in yellowness and what compositions will provide both. Applicants have recognized thermal stability and yellowness as problems in the area of shaped articles and thermal transfer receiving sheets, and have identified a criterium for forming such shaped articles and thermal transfer receiving sheets. The criterium for achieving the desired properties of yellowness and thermal stability is selection of microbeads having less than 10 wt % styrenic monomers, and are selected from

the group consisting of acrylic and allylic monomers. Maier and Harrison fail to provide any likelihood of success in producing a microbead having a change in CIELAB value  $b^*$  of less than 0.2 towards yellowness on exposure to UV light of 50 Klux for one week and/or a thermal stability of a 2% weight loss above 270°C.

Maier and Harrison do not disclose all the present claim limitations, as there is no mention that shaped articles or thermal receiver sheets comprising microbeads having a change in CIELAB value  $b^*$  of less than 0.2 towards yellowness on exposure to UV light of 50 Klux for one week and/or a thermal stability of a 2% weight loss above 270°C.

Since Maier and Harrison fail to suggest the modification necessary to achieve the present claims, fail to provide any likelihood of success, and fail to disclose all the limitations of the present claims, the Applicants believe that the presently claimed invention is not obvious in view of Maier and Harrison.

### **Summary**

The Applicants believe and have provided evidence that one of ordinary skill in the art at the time the invention would understand the use of "after one week exposure to UV light of 50 Klux", and, therefore, the usage of the terms is not indefinite.

The Applicants believe and have provided evidence that one of ordinary skill in the art at the time the invention would understand the use of "CIELAB value" in the claims, as well as the nature of the  $b^*$  value, and, therefore, the usage of the terms is not indefinite.

Since Maier fails to suggest the modification necessary to achieve the present claims, fails to provide any likelihood of success, and fails to disclose all the limitations of the present claims, and, in light of surprising results, the Applicants believe that the presently claimed invention is not obvious in view of Maier.

Since Maier and Saito fail to suggest the modification necessary to achieve the present claims, fail to provide any likelihood of success, and fail to disclose all

the limitations of the present claims, the Applicants believe that the presently claimed invention is not obvious in view of Maier and Saito.

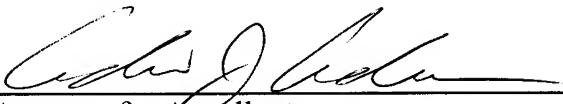
Since Maier and Hart fail to suggest the modification necessary to achieve the present claims, fail to provide any likelihood of success, and fail to disclose all the limitations of the present claims, the Applicants believe that the presently claimed invention is not obvious in view of Maier and Hart.

Since Maier and Harrison fail to suggest the modification necessary to achieve the present claims, fail to provide any likelihood of success, and fail to disclose all the limitations of the present claims, the Applicants believe that the presently claimed invention is not obvious in view of Maier and Harrison.

### **Conclusion**

For the above reasons, Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the rejection by the Examiner and mandate the allowance of Claims 1, 2, 5, 7-19, 21, 22, 24-40, 42 and 43.

Respectfully submitted,

  
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Enclosures

If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.

## **Appendix I - Claims on Appeal**

1. A shaped article comprising a continuous first polymer phase having dispersed therein microbeads of a cross-linked second polymer, said microbeads being bordered by void space, wherein the cross-linked second polymer is derived from monomers that comprise less than 10 wt% styrenic monomers and are selected from the group consisting of acrylic and allylic monomers, wherein the microbeads are thermally stable, experiencing a 2% weight loss above 270°C, wherein the microbeads have a change in CIELAB value  $b^*$  towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in  $b^*$  is less than or equal to 0.2.

2. The article of claim 1 wherein the monomers from which the second polymer is derived contain less than one wt% styrenic monomers.

5. The article of claim 1 wherein the monomers from which the second polymer is derived comprise acrylic monomers.

7. The article of claim 5 wherein the acrylic monomers are selected from the group consisting of methyl acrylate, 1,6-hexanediol diacrylate, trimethylol propane triacrylate, and dipropylene glycol diacrylate.

8. The article of claim 5 wherein the microbeads comprise a co-polymer derived from (a) methylmethacrylate and 1,6-hexanediol diacrylate or (b) methylmethacrylate and trimethylol propane triacrylate.

9. The article of claim 1 wherein the microbeads have a size in the range of 0.2 to 30 micrometers.

10. The article of claim 9 wherein the microbeads have a size in the range of 0.5 to 5 micrometers.

11. The article of claim 1 wherein the microbeads are present in an amount of about 5-50% by weight based on the weight of said first polymer.

12. The article of claim 1 wherein said void space occupies about 2-60% by volume of said shaped article.

13. The article of claim 1 wherein the microbeads are coated with a slip agent.

14. The article of claim 1 wherein the first polymer comprises a polyester or polypropylene polymer.

15. The article of claim 14 wherein the first polymer comprises a polyester polymer.

16. The article of claim 15 wherein the first polymer is poly(ethylene terephthalate).

17. The article of claim 1 wherein the article is a dye diffusion thermal transfer dye receiving sheet.

18. The article of claim 1 wherein the second polymer is derived from monomers comprising more than 20 wt % of crosslinking monomer.

19. The article of claim 18 wherein the monomers comprise methylmethacrylate.

21. A shaped article comprising a continuous first polymer phase having dispersed therein microbeads of a cross-linked second polymer, said microbeads being bordered by void space, wherein the second polymer is derived from monomers that comprise not more than 10 wt% styrenic monomer and comprise methacrylate monomers, and wherein the microbeads are made from acrylic crosslinking monomers such that the microbeads are thermally stable, experiencing a 2% weight loss above 270°C, wherein the microbeads have a change in CIELAB value b\* towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in b\* is less than or equal to 0.2.

22. The article of claim 21 wherein the second polymer comprises less than one wt% styrenic monomer.

24. The article of claim 21 wherein the monomers from which the second polymer is derived are selected from the group consisting of acrylic and methacrylic monomers.

25. The article of claim 24 wherein the monomers from which the second polymer is derived comprise acrylic monomers.

26. The article of claim 25 wherein the acrylic monomers from which the second polymer is derived are selected from methyl acrylate, 1,6-hexanediol diacrylate, trimethylol propane triacrylate, and dipropylene glycol diacrylate.

27. The article of claim 26 wherein the microbeads comprise a polymer derived from (a) methylmethacrylate and 1,6-hexanediol diacrylate or (b) methylmethacrylate and trimethylol propane triacrylate.

28. The article of claim 21 wherein the microbeads have a size in the range of 0.2 to 30 micrometers.

29. The article of claim 21 wherein the microbeads have a size in the range of 0.5 to 5 micrometers.

30. The article of claim 21 wherein the microbeads are present in an amount of about 5-50% by weight based on the weight of said first polymer.

31. The article of claim 21 wherein said void space occupies about 2-60% by volume of said shaped article.

32. The article of claim 21 wherein the microbeads are coated with a slip agent.

33. The article of claim 21 wherein the first polymer comprises a polyester or polypropylene polymer.

34. The article of claim 21 wherein the first polymer comprises a polyester polymer.

35. The article of claim 34 wherein the first polymer is poly(ethylene terephthalate).

36. The article of claim 21 wherein the article is a dye diffusion thermal transfer dye receiving sheet.

37. The article of claim 21 wherein the second polymer is derived from monomers comprising more than 20 wt % of crosslinking monomer.

38. The article of claim 37 wherein the monomers comprise methylmethacrylate.



39. The article of claim 1 wherein the shaped article is a fiber, a rod, a tube, a sheet, a film, or a container.

40. The article of claim 39 wherein the shaped article is coated with a slip agent comprising silica or alumina.

42. A dye diffusion thermal transfer receiving sheet comprising a continuous first polymer phase having dispersed therein microbeads of a cross-linked second polymer, said microbeads being bordered by void space, wherein the monomers from which the second polymer is derived comprise not more than 10 wt% styrenic monomer and wherein the monomers from which the second polymer is derived are selected from the group consisting of acrylic and allylic monomers, such that the microbeads are thermally stable meaning that the temperature at which the microbeads experience a 2% weight loss is above 270°C, wherein the microbeads have a change in CIELAB value b\* towards yellowness after one week exposure to UV light of 50 Klux, wherein the change in b\* is less than or equal to 0.2.

43. The sheet of claim 42 wherein the second polymer is derived from monomers comprising more than 20 wt % of crosslinking monomer.

## **Appendix II - Evidence**

1. Declaration Under Rule 35 U.S.C. 132, provided in Applicant's Response Under 37 CFR 1.116, dated November 4, 2003.
2. Declaration Under Rule 35 U.S.C. 132, provided in a Preliminary Amendment, dated February 4, 2004.
3. Attachments LMBA-1, as provided in Applicant's Response Under 37 CFR 1.116, dated June 16, 2006.
4. Attachment LMBA-2, as provided in Applicant's Response Under 37 CFR 1.116, dated June 16, 2006.
5. Attachment LMBA-3, as provided in Applicant's Response Under 37 CFR 1.116, dated June 16, 2006.

### **Appendix III – Related Proceedings**

None